

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Donald A. Lord,

Plaintiff,

-against-

City of New York et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/3/2022

1:20-cv-03890 (LTS) (SDA)

ORDER

**STEWART D. AARON, United States Magistrate Judge:**

The Court is in receipt of a purported amended pleading filed by Plaintiff. (See ECF No. 158.) This pleading is improperly filed as Plaintiff is not within the time to amend as of course under Federal Rule of Civil Procedure 15(a)(1) and has not sought leave to file an amended pleading pursuant to Rule 15(a)(2). Accordingly, the Clerk of Court is respectfully requested to strike the pleading from the docket.

If Plaintiff wishes to file an amended pleading, which would be his third amended pleading, he must file a motion to amend. Moreover, because the Court previously set a deadline of June 1, 2022 for any amended pleadings (see 5/2/2022 Order, ECF No. 138), such motion would be subject to Rule 16(b)(4), which provides that a scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4); *see also Seigel v. Structure Tone Org. et al.*, No. 19-CV-07307 (VB), 2022 WL 14746408, at \*14 (S.D.N.Y. Oct. 24, 2022) ("[W]hen a motion to amend a pleading is made after the deadline has expired, the lenient standard under Rule 15(a) must be balanced against the requirement under Rule 16(b) that the Court's scheduling order shall not be modified except upon a showing of good cause.") (internal quotation marks and alterations omitted). "[A] finding of 'good cause' depends on the diligence

of the moving party.” *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000). Although, “[t]he leniency afforded to *pro se* litigants applies equally to procedural requirement[s] such as those established by Rule 16 . . . a plaintiff’s *pro se* status alone does not establish good cause.” *Seigel*, 2022 WL 14746408, at \*14.

If Plaintiff wishes to seek leave to amend he must file a motion in accordance with these standards no later than November 17, 2022. Plaintiff is reminded that any amended pleading completely replaces, rather than supplements, the current operative pleading.<sup>1</sup> Alternatively, given that the purported amended pleading filed at ECF No. 158 appears to contain entirely new claims (pursuant to the Americans with Disabilities Act) against new defendants, Plaintiff may file a new, separate action in accordance with the rules and procedures of this Court.

**SO ORDERED.**

DATED:        New York, New York  
                  November 3, 2022



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STEWART D. AARON  
United States Magistrate Judge

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<sup>1</sup> The Court notes that were Plaintiff to seek leave to file the pleading filed at ECF No. 158 it would eliminate all of his current claims.